

CITIES AND TOWNS BULLETIN

AND UNIFORM COMPLIANCE GUIDELINES ISSUED BY STATE BOARD OF ACCOUNTS

September 2006

APRIL AND JUNE TRAINING SCHOOLS

The State Board of Accounts extends its deepest appreciation to the officers and committees of the Indiana League of Municipal Clerks and Treasurers for making the arrangements and handling the registrations for the April Workshop at the ILMCT Conference. We want to also thank Fred Lewis, School Committee Chairperson, and his staff for handling the arrangements for the June School. Next year's June School will be held as part of the League's Annual Conference in Fort Wayne, Indiana the week of June 11 through June 15, 2007.

CUMULATIVE FIREFIGHTING, BUILDING AND EQUIPMENT AND POLICE RADIO FUND

IC 36-8-14 authorizes cities and towns to provide a cumulative building and equipment fund for the purchase, construction, renovation, or addition to buildings used by the fire department and for the purchase of firefighting equipment, including making the required payments under a lease rental with option to purchase agreement made to acquire the equipment. A municipality may also use the fund to purchase police radio equipment. The fund may also be used for the purchase, construction, renovation or addition to a building or the purchase of equipment for use of a provider of emergency medical services under IC 16-31-5 to the city or town establishing the fund.

The statute limits the tax levy to no more than thirty-three hundredths cents (\$0.0333) on each one hundred dollars (\$100) of assessed valuation in the taxing district. Any tax collected after establishing this tax levy shall be deposited in a special fund to be known as the "building or remodeling, firefighting, and police radio equipment fund." This fund may not be used for any purpose other than the purpose for which it was raised. Expenditures may be made only after an appropriation has been made available.

Any questions regarding procedures to establish this fund should be directed to the Indiana Department of Local Government Finance, Indiana Government Center North, Room N1058, 100 N. Senate, Indianapolis, Indiana 46204.

BONDS OF OFFICERS AND EMPLOYEES OF THE DEPARTMENT OF PARKS AND RECREATION

IC 36-10-3-16 lists the bonding requirements for officers and employees of a department of parks and recreation.

- "a. Every officer and employee who handles money in the performance of duties as prescribed by this chapter shall execute an official bond for the term of office or employment before entering upon the duties of the office or employment.
- b. The fiscal body of the unit may, under IC 5-4-1-18, authorize a blanket bond or crime insurance policy endorsed to include faithful performance to cover all officers' and employees' faithful performance of duties. The amount of the bond or crime insurance policy shall be fixed by the fiscal body and, in the case of a municipality, must be approved by the executive.
- c. All official bonds shall be filed and recorded in the office of the county recorder of the county in which the department is located."

FEDERAL EXCISE TAXES

As a general rule, governmental units are exempt from and should not pay any federal excise tax. To obtain the exemption, a properly executed exemption certificate must be filed with the vendor from whom the purchase is made. This exemption certificate may be prepared at the time the order is placed or at the time payment is made. The exemption certificate may be a printed or copied form and should be substantially in the form currently used. For information concerning the form of the exemption certificate, contact the Internal Revenue Service at 1-800-829-1040.

Claims and invoices should be carefully audited to see that no federal excise taxes are included and paid. Disbursing officers should require that invoices show separately the gross price, the amount of the excise tax, and the final price to the governmental unit.

In some instances, a city or town may have erroneously paid the excise taxes from which they are exempt. In such instances, the city or town has three years from the date the tax was paid to the Federal Government in which to file for a refund.

To obtain a refund, the city or town should submit to the seller an exemption certificate for each item on which excise tax was paid accompanied with documentary evidence that the exemption had not been claimed or received. Such evidence may be copies of invoices, affidavits, records, etc.

The Internal Revenue Service will provide forms on which the original taxpayer may claim reimbursement for excise tax erroneously paid by a city or town.

Any questions concerning federal excise tax should be directed to the Internal Revenue Service.

STATE SALES TAXES

Governmental units are eligible for an exemption from the state sales tax on purchases. To obtain the exemption, a Sales Tax Exemption Certificate must be obtained from the Department of Revenue. Application should be made to the Sales Tax Division of the Department of Revenue. This certificate must be presented at the time a purchase is made to avoid paying sales tax. If sales tax is paid erroneously, a refund application may be obtained from the Sales Tax Division.

Lodging for individuals in hotels and motels is usually not exempt from state sales tax. Therefore, reimbursements for lodging in approved travel status may include state sales tax. However, it should be kept in mind that claims for all such reimbursements must be supported by a fully itemized receipt showing date(s) of lodging, the name(s) of the person(s) occupying the room and the amount paid.

VOLUNTEER FIREFIGHTERS-CLOTHING AND AUTOMOBILE ALLOWANCE

IC 36-8-12-5 states:

"(a) Unless otherwise provided by contract, a unit served by a volunteer fire department shall pay to each active and participating member of the department:

- (1) a clothing allowance of not less than one hundred dollars (\$100) per year; and
- (2) an automobile allowance of not less than one hundred (\$100) per year for the use of the member's automobile in the line of duty.

(b) A contract may also provide that fees for membership in a regularly organized volunteer firefighters' association be paid by the unit on behalf of the firefighters in the volunteer fire department."

RESIDENCY REQUIREMENTS-CITY POLICE AND FIRE DEPARTMENTS

Members of city police and fire departments must reside in Indiana in one (1) of the following areas:

- (1) Within the county in which the city is located; or
- (2) In a county that is contiguous to the county in which the city is located. (IC 36-8-4-2)

A city with a population of less than seventy-five hundred (7,500) may impose more restrictive residency requirements as set out in IC 36-8-4-2 (c) and (d).

TRANSFERS OF TOWN FUNDS

Town with a Population of 500 or Less

Notwithstanding the provisions of any other statute, a town may transfer money from any town fund to another town fund after the passage of an ordinance or a resolution by the town legislative body specifying the:

- (1) amount of the transfer;
- (2) funds involved;
- (3) date of the transfer; and
- (4) general purpose of the transfer. [IC 36-5-4-13(a)]

Town with a Population of More Than 500 But Less Than 2,000

Notwithstanding IC 5-14-1 and IC 8-14-2, a town may transfer money distributed to the town from:

- (1) the motor vehicle highway account under IC 8-14-1;
- (2) the local road and street account under IC 8-14-2 or
- (3) the:
 - (A) motor vehicle highway account under IC 8-14-1; and
 - (B) local road and street account under IC 8-14-2;

to any other town fund after the passage of an ordinance or a resolution by the town legislative body that specifies the amount of the transfer, the funds involved, the date of the transfer, and the general purpose of the transfer. However, the total amount of all money transferred by a town may not exceed forty thousand dollars (\$40,000). [IC 36-5-4-13(b)]

ACCESSIBLE PARKING SPACES

Cities and towns that provide parking facilities for self-parking by employees or visitors are required to have accessible parking spaces reserved according to the following schedule:

TOTAL NUMBER OF PARKING SPACES IN FACILITY	MINIMUM NUMBER OF RESERVED SPACES
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1,000	2% of total
over 1,000	20 plus 1 for each 100 spaces over 1,000

ACCESSIBLE PARKING SPACES – (Continued)

A parking facility may provide accessible parking spaces in different locations from other parking spaces if the location of the accessible spaces results in equivalent or greater access by the shortest accessible route of travel to an accessible entrance of:

- (1) a building, if the parking facility does not serve a specific building; or
- (2) the parking facility, if the parking facility does not serve a specific building.

For buildings with more than one (1) accessible entrance that has parking adjacent to the entrances, accessible parking spaces must be dispersed and located closest to the accessible entrances.

The reserved space or spaces must be reserved by posting immediately adjacent to and visible from the space and spaces a vertical sign measuring at least forty-eight (48) inches from the base of the sign, located in a manner that will not be obscured by a vehicle parked in the space, and bearing the following:

- (1) The international symbol of accessibility.
- (2) Letters and numbers that have a width to height ratio between 3:5 and 1:1 and a stroke width to height ratio between 1:5 and 1:10.
- (3) Characters and numbers that are sized according to the distance from which the characters and numbers are read, with the minimum height measured by an uppercase "X". Lowercase characters may be used.

The characters and background of a sign must be eggshell, matte, or another nonglare finish. Characters and symbols used on a sign must contrast with the background color of the sign. The size and location of parking spaces must conform to the following standards:

- (1) An accessible parking space must be at least ninety-six (96) inches wide.
- (2) An access aisle adjacent to an accessible parking space must be at least sixty (60) inches wide and may not be restricted by a built-up curb ramp, planters, curbs, wheel stops, or any other obstructions.
- (3) Two (2) adjacent accessible parking spaces may share a common access aisle.
- (4) An access aisle:
 - (A) must be part of an accessible route to the building or facility; and
 - (B) must either merge with the accessible route or have a curb ramp to the accessible route that complies with the rules governing curb ramps.
- (5) An accessible parking space and an access aisle must have a slope of not more than 1:50 [two percent (2%)] in all directions.
- (6) An accessible parking space and an access aisle must be designated with blue lines.
- (7) An accessible parking space and at least one (1) vehicle access route to the accessible parking space must have a minimum vertical clearance of at least ninety-eight (98) inches.

ACCESSIBLE PARKING SPACES – (Continued)

A parking facility must designate at least one (1) accessible parking space of every eight (8) accessible parking spaces as a van accessible parking space. A van accessible parking space must have an access aisle at least ninety-six (96) inches wide. A parking facility may group all van accessible parking spaces in a single location. A parking facility that:

- (1) is in existence on June 30, 1996 and ;
- (2) conforms to the specifications for the size and locations of parking spaces as the specifications that were in effect on June 30, 1996;

is not required to conform with the van accessible requirements until the first time the parking facility is resurfaced or restriped after June 30, 1996. (IC 5-16-9)

ORDINANCE VIOLATIONS BUREAU

The legislative body of a municipal corporation may establish, by ordinance or code, an ordinance violations bureau. Upon the creation of a bureau, the legislative body shall provide for the appointment of a violations clerk (who may be the clerk or clerk-treasurer of the municipal corporation) to be the administrator of the bureau.

If the legislative body does not establish an ordinance violations bureau, the clerk or clerk-treasurer of the municipal corporation is designated the violations clerk.

The violations clerk may accept written appearances, waiver of trial, admissions of violations, and payment of civil penalties of not more than two hundred fifty dollars (\$250) in ordinance violation causes, subject to the schedule prescribed under IC 33-36-3.

Upon the appointment or designation of the violations clerk as provided by IC 33-36-2-1, the legislative body shall designate, by ordinance or code, a schedule of ordinance and code provisions of the municipal corporation that are subject to admission of violation before the violations clerk and the amount of civil penalty to be assessed a violator who elects to admit a violation. Civil penalties shall be paid to, receipted, and accounted for by the clerk under procedures provided for by the state board of accounts. Such payments should be receipted to the general fund. Payment of civil penalties may be made in person, by mail, or to an agent designated by the legislative body.

A person charged with an ordinance or code violation is entitled to a trial before a court as provided by law, unless the person waives the right to trial and enters an admission of the violation with the violations clerk. Upon such an admission, the clerk shall assess and receive from the violator the amount prescribed by the schedule of civil penalties established under IC 33-36-3-1.

If a person charged with a violation wants to exercise the right to trial, the person shall appear before the violations clerk and deny the violation or enter a written denial with the clerk.

In a county having a consolidated city, the schedule of ordinance violations designated by a municipal corporation must also be approved by the city-county legislative body.

If a person:

- (1) Denies an ordinance or code violation;
- (2) Fails to satisfy a civil penalty assessed by the violations clerk after having entered an admission of violation; or
- (3) Fails to deny or admit the violation;

ORDINANCE VIOLATIONS BUREAU – (Continued)

the clerk shall report this fact to the official having the responsibility to prosecute ordinance violation cases for the municipal corporation.

Proceedings in court against the person shall then be initiated for the alleged ordinance violations.

All sums collected by the violations clerk as civil penalties for ordinance violations shall be accounted for and paid to the municipal corporation as provided by law.

An ordinance violation admitted does not constitute a judgment for the purposes of IC 33-37, and an ordinance violation costs fee may not be collected from the defendant under IC 33-37-4. In addition, an ordinance violation processed may not be considered for purposes of IC 33-37-7-6 when determining the percentage of ordinance violations prosecuted in certain courts. (IC 33-36-3-6)

IC 36-1-6-3 excludes moving vehicle traffic violations from being enforced under this procedure.

CITY ATTORNEY – POWERS AND DUTIES - COMPENSATION

IC 36-4-9-12 lists the powers and duties of the head of the city department of law. These include:

- (1) manage the legal affairs of the city;
- (2) prosecute violators of city ordinances;
- (3) give legal advice to the officers, departments, boards, commissions, and other agencies of the city;
- (4) draft ordinances or other legal papers for the city and its departments, boards, commissions, and other agencies when requested by the proper officer;
- (5) maintain custody of the records of his office and turn them over to his successor in office;
- (6) make all title searches and examine all abstracts required in public work of any kind, including opening, widening, or changing a street, alley, or public place;
- (7) promptly commence all proceedings necessary or advisable for the protection or enforcement of the rights of the city or the public;
- (8) use all diligence to collect costs, fees, and recoveries within the scope of his duties;
- (9) report, in writing to the city executive all matters that he considers important; and
- (10) report, in writing, to the city fiscal officer all judgments for which the city is liable.

The compensation of a city attorney should be set out in the city's salary ordinance. If the city attorney is to receive additional compensation for services performed in connection with the creation or the operation of a municipally owned function or utility, the amount of such additional compensation should also be listed in the salary ordinance and be properly approved by the governing body over the utility, the mayor, and the common council.

We recommend that if a city hires a city attorney through an employment contract, the salary ordinance should incorporate the provisions of such contract. Such contract could provide for a specified dollar sum for annual compensation for normal services plus provisions for payment at hourly rates, or standard fee arrangements, for unique services such as litigation, bond issues, work with administrative agencies, or other similar services.

It is our audit position that, unless otherwise specified in an employment contract, routine litigation and work on general obligation bond issues fall within the duties of the municipal attorney.

RIVERBOAT GAMBLING – ADMISSION TAXES

Admission tax money paid to a unit of local government:

- (1) must be paid to the fiscal officer of the unit and deposited in the unit's general fund or riverboat fund established under IC 36-1-8-9 or both;
- (2) may not be used to reduce the unit's maximum or actual levy under IC 6-1.1-18.5 but may be used at the discretion of the unit to reduce the property taxes of the unit for a particular year;
- (3) may be used for any legal or corporate purpose of the unit, including the pledge of money to bonds, leases, or other obligations including the pledge of money to bonds, leases, or other obligations under IC 5-1-14-4, and
- (4) is considered miscellaneous revenue. (IC 4-33-12-6)

RIVERBOAT GAMBLING – WAGERING TAXES

Wagering tax money paid to a unit of local government:

- (1) Must be paid to the fiscal officer of the unit and deposited in the unit's general fund or riverboat fund established under IC 36-1-8-9, or both;
- (2) May not be used to reduce the unit's maximum or actual levy under IC 6-1.1-18.5; and
- (3) May be used for any legal or corporate purpose of the unit, including the pledge of money to bonds, leases, or other obligations including the pledge of money to bonds, leases, or other obligations under IC 5-1-14-4.

IC 4-33-13 does not prohibit the city or county designated as the home dock of the riverboat from entering into agreements with other units of local government in Indiana or in other states to share the city's or county's part of the tax revenue received. (IC 4-33-13-6)

LOCAL MAJOR MOVES CONSTRUCTION FUND

IC 8-14-16 requires cities and towns in counties traversed by the Indiana Toll Road to set up a local major moves construction fund for deposit of a special distribution from the County Auditor on or before September 15, 2006. Money in the fund may be expended only for the following purposes:

- (1) Construction of highways, roads and bridges.
- (2) In a county that is a member of the northwest Indiana regional development authority, or in a city or town located in such a county, any purpose for which the regional development authority may make expenditures under IC 36-7.5.
- (3) Providing funding for economic development projects (as defined in IC 6-3.5-7-13.1(c)(1) or IC 6-3.5-7-13.1(c)(2)(a) through IC 6-3.5-7-13.1(c)(2)(K).
- (4) Matching federal grants for a purpose described in IC 8-14-16-5.
- (5) Providing funding for interlocal agreements under IC 36-1-7 for a purpose described in IC 8-14-16-5.
- (6) Providing the city's contribution to the northwest Indiana regional development authority, in the case of a city described in IC 36-7.5-2-3(e).

Such fund must be appropriated as part of the annual budget for the calendar year in accordance with IC 6-1.1-17.

IC 8-14-14 provides for two special distributions of \$75 million to all cities and towns on or before October 15, 2006 and October 15, 2007 to be receipted to each city or town's motor vehicle highway fund using the same formula as other MVH distributions are calculated.

QUESTIONS AND ANSWERS FROM THE JUNE 2006 TRAINING SCHOOL

Question #1: Where can I find the regulation/IC reference that sets the capital asset threshold at \$750 for water utilities?

Answer #1: The National Association of Regulatory Utility Commissioners (NARUC) set the following capitalization thresholds in its Uniform System of Accounts for Water Utilities: Class A-\$750, Class B-\$400, and Class C-\$150. If your water utility is under the jurisdiction of the Indiana Utility Regulatory Commission (IURC), the utility would have to adopt the applicable threshold. If your water utility is not under the IURC, then the board over the utility could adopt a capitalization threshold it feels is best for the utility.

Question #2: What is the purpose of the Annual Operational Report for Local Roads and Streets which is to be filed by all cities and towns with populations of 20,000 or more?

Answer #2: IC 8-17-4.1 requires each city and town with populations of 20,000 or more to file such report with the State Board of Accounts, the Indiana Department of Transportation, and the Indiana LTAP. The information is used by these agencies for auditing, planning, compiling statistical information, and other purposes.

Question #3: I encumbered funds at the end of 2005 from our EDIT fund for curb construction in 2006. At that time I had a quote of \$131,000. As I got ready to do this project I remembered the requirement to advertise for bids for projects over \$50,000. Is my encumbrance still valid or do I have to start over?

Answer #3: In order to encumber appropriations from one year to the next, you must either have an outstanding purchase order issued to a vendor or be obligated to pay someone through a contract. Assuming the Town did not formally award the project to a contractor, the Town would not have been able to encumber funds for 2006. We recommend the Town advertise for bids on the project and obtain the necessary appropriation of the EDIT fund prior to paying for the project costs.

Question #4: How do you go about setting up a petty cash fund? Is there a dollar limit for the amount of the fund?

Answer #4: IC 36-1-8-3 allows a city or town council to establish a petty cash fund for any of its offices in a like manner to that prescribed by IC 36-1-8-2 for cash change funds. Such fund is to be used to pay small or emergency items of operating expense and should be periodically reimbursed from the appropriate fund through the normal claim process.

The size of the fund would depend on the number of small or emergency items which will be processed through the fund by the city or town.

Question #5: If a wrong amount was encumbered at the end of 2005, what should be done to the appropriation ledger in 2006 to correct the matter? The amount encumbered was higher than the amount actually paid.

Answer #5: An entry should be made in the appropriation column of the Ledger of Appropriations, Encumbrances, Disbursements and Balances to reduce the amount of Appropriations carried forward.

Question #6: Is there an amount, say \$2,000, that you can overspend your budget without having to obtain an additional appropriation or make a transfer from another appropriation line item?

Answer #6: No. IC 5-11-10-1.6 and IC 5-11-10-2 require a sufficient cash and appropriation balance be on hand before any claim can be paid.

QUESTIONS AND ANSWERS FROM THE JUNE 2006 TRAINING SCHOOL – (Continued)

Question #7: Please explain what the requirements are for taking quotes on a public works project which is under \$50,000? The language in IC 36-1-12-4.7 and IC 36-1-12-5 is confusing.

Answer #7: IC 36-1-12-4.7 requires a city or town to obtain at least three (3) quotes from persons known to deal in the class of work to be performed whenever the cost of the public work project is estimated to cost at least twenty-five thousand dollars (\$25,000) and less than fifty thousand dollars (\$50,000), or seventy-five thousand dollars (\$75,000) for second class cities.

IC 36-1-12-5 deals with public works projects under twenty-five thousand dollars (\$25,000). This statute allows you to either obtain bids for such projects or invite at least three quotes.

Question #8: How long and what files (documents) must a city or town keep for a CDBG Grant?

Answer #8: All grant documents should be kept a minimum of three years for all cities and all towns with a population above 5,000 and four years for towns below 5,000 population and after the documents are audited. Since these documents are not prescribed accounting forms listed in the Retention Schedules adopted by the Commission on Public Records, you will have to contact the County Clerk to initiate approval of the disposal of the documents through your Local Commission on Public Records.

Question #9: Our fire department received a federal grant for exercise equipment. Since this amount of money was not appropriated in the 2006 budget, how can we spend this money without going to the council for an additional appropriation? Can we increase the appropriation line item by the amount of the federal grant?

Answer #9: If you receive grant money before you have to pay for the items included in the grant, you can set up a separate grant fund to deposit the money into and pay for the exercise equipment. If this was a reimbursement grant, IC 6-1.1-18-7.5 allows the council to appropriate such federal or state reimbursements without going through the additional appropriation process in IC 6-1.1-18-5.

Question #10: If a taxpayer elects to pay his/her Spring and Fall installments of property taxes in the Spring, will the County distribute both installment to us in the June Settlement?

Answer #10: It is our understanding that the County will distribute all property taxes based on when they are collected and not when the taxes are due.

Question #11: Is there a statute stating when claimants must have their invoices and bills on file with the clerk-treasurer before a claim is paid?

Answer #11: Yes. IC 36-4-8-5 (for cities) and IC 36-5-4-4 (for towns) requires all claims to be filed in the clerk-treasurer's office at least five (5) days before the meeting at which they will be allowed before such claims can be paid. However, these statutes do not apply to claims which are permitted by ordinance to be paid between board meetings under IC 36-4-8-14 and IC 36-5-4-12.

Question #12: A check was sent to the wrong vendor and cashed. The vendor is mailing a check back to us. Can it go back into the appropriation account that the original check was written from?

Answer #12: Yes. As long as the refund was for an expenditure made in the current year.

QUESTIONS AND ANSWERS FROM THE JUNE 2006 TRAINING SCHOOL – (Continued)

Question #13: Can elected officials collect unemployment if they don't get reelected?

Answer #13: No. Elected officials are excluded from those persons who are eligible to receive unemployment in IC 22-4-8-2(i)(1).

Question #14: If someone is denied a gun permit, do we automatically give a refund to the person who was not issued a permit?

Answer #14: The person should fill out a claim for a refund with the police department. Such claim should be attached to an accounts payable voucher and submitted for allowance. The refund can be paid from the local law enforcement continuing education fund without appropriation.

Question #15: How much money do we refund to a person who has applied for a lifetime handgun license but was denied the license?

Answer #15: IC 35-47-2-3 requires thirty dollars (\$30) to be refunded from the law enforcement continuing education fund if the license is not issued.

Question #16: What constitutes proper notice for council meeting to be held on a day not originally on which council normally meets?

Answer #16: IC 5-14-1.5-5 requires public notice of the date, time and place of the meeting to be given at least forty-eight (48) hours (excluding Saturdays, Sundays and legal holidays) before the meeting. Public notice shall be given by posting a copy of the notice at the city or town hall or, if there is no city or town hall, at the building where the meeting is to be held. The notice must also be delivered to all news media which have requested in writing to be notified of when the city or town has meetings. Notice to the news media can be made by U.S. mail, electronic mail, or by fax.

Question #17: Are cell phones provided to employees a taxable fringe benefit under IRS guidelines if we allow our employees to use them for personal phone calls and do not require reimbursement?

Answer #17: Cell phones provided to employees could be considered a taxable fringe benefit by the IRS if there is personal use of such cell phones. We recommend you contract the IRS at 1-800-829-1040 for a ruling on the matter.